

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -AUGUST 16, 2005- -7:30 P.M.

Mayor Johnson convened the Regular Meeting at 7:55 p.m. Councilmember Daysog led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, deHaan, Gilmore, Matarrese, and Mayor Johnson - 5.

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(05-396) Proclamation recognizing John Knowles for his contribution to the revitalization of the Park Street Business District.

Mayor Johnson read and presented the proclamation to John Knowles.

Mr. Knowles thanked the Council for the proclamation.

(05-397) Proclamation designating August 26th as Women's Equality Day in Alameda.

Mayor Johnson read and presented the proclamation to Dorie Behrstock, Vice President of Isle City of Alameda Business and Professional Women.

Ms. Behrstock introduced Isle City of Alameda Business and Professional Women members Margaret Seaman and Joanne Ainsworth; thanked the Council for the proclamation; invited the Council and public to a reception on August 26, 2005 at 6:00 p.m. at the Harbor Bay Community Center.

CONSENT CALENDAR

Mayor Johnson announced that the Resolution Creating Special Newsrack Districts [paragraph no. 05-404] was removed from the Consent Calendar for discussion.

Vice Mayor Gilmore moved approval of the remainder of the Consent Calendar.

Councilmember deHaan seconded the motion, which carried by unanimous voice vote - 5.

[Items so enacted or adopted are indicated by an asterisk preceding the paragraph number]

(*05-398) Minutes of the Special Joint City Council, Community Improvement Commission, Alameda Reuse and Redevelopment Authority and Housing Authority Board of Commissioners meeting and the Regular City Council meeting held on August 2, 2005. Approved.

(*05-399) Ratified bills in the amount of \$2,127,711.09.

(*05-400) Recommendation to accept Quarterly Investment Report for period ending June 30, 2005. Accepted.

(*05-401) Recommendation to accept Quarterly Sales Tax Report for the period ending June 30, 2005, for sales transactions in the First Calendar Quarter of 2005. Accepted.

(*05-402) Recommendation to authorize the City Manager to execute second amendment to Consultant Agreement with Harris & Associates, extending the term, scope of work and price for services associated with the Webster Street Renaissance Project. Accepted.

(*05-403) Recommendation to approve an agreement with Ameresco Keller Canyon, LLC for the purchase of power from Landfill Gas Generation. Accepted.

(05-404) Resolution No. 13882, "Creating Special Newsrack Districts in Both the Park Street and West Alameda Business Districts as Authorized in the Alameda Municipal Code Section 22-7, Newspaper and Periodical Vending Machines of Article 1 (Streets), Chapter XXII (Streets and Sidewalks)." Adopted.

Councilmember Matarrese stated that the public should be aware of the Newsrack Districts, which go along with the improvements on Park and Webster Streets and increase attractiveness in the business districts.

Robb Ratto, Park Street Business Association (PSBA), urged adoption of the resolution.

Sherri Steig, West Alameda Business Association (WABA), stated WABA supports adoption of the resolution.

Councilmember Daysog stated that he would like to recognize the efforts of former Councilmember Karin Lucas; requested staff to review posting signs on historic lampposts.

Mayor Johnson stated a lot of signs are attached to the poles; the signs detract from the attractiveness of the poles and should be avoided if possible.

Councilmember deHaan moved adoption of the resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5.

(*05-405) Resolution No. 13883, "Requiring City Council Approval of Any Amendment to the Employment Contracts of the City Manager or City Attorney." Adopted.

(*05-406) Resolution No. 13884, "Amending the Alameda City Employees (ACEA) Salary Schedule by Establishing Salary Range for the Position of Senior Combination Building Inspector." Adopted.

(*05-407) Resolution No. 13885, "Amending the Management and Confidential Employees Association (MCEA) Salary Schedule by Establishing Salary Ranges for the positions of Information Systems Network Analyst and Safety Officer." Adopted.

REGULAR AGENDA ITEMS

(05-408) Public Hearing to consider Appeals of the Planning Board's approval of a Use Permit and Design Review for the parking garage and new Cineplex components of the proposed Alameda Theater Project on Oak Street and Central Avenue. This site is located at 1416 Oak Street and 2305 Central Avenue (Video Maniacs site), within the C-C-T (Community Commercial Theater Combining) District. Applicants: City of Alameda (DSD) and Kyle Conner, Alameda Entertainment Associates, LP. Appellants: Ani Dimusheva and Valerie Ruma;

(05-408A) Resolution No. 13886, "Upholding the Planning Board of the City of Alameda's Decision to Approve Design Review DR05-0028 and Use Permit UP05-0008 for the Proposed New Civic Center Parking Garage." Adopted; and

(05-408B) Resolution No. 13887, "Resolution Upholding the Planning Board of the City of Alameda's Decision to Approve Design Review DR05-0041 for the Proposed Cineplex at 2305 Central Avenue." Adopted.

The Development Services Director gave a brief presentation.

Mayor Johnson opened the public portion of the Hearing.

Proponents (In favor of project): Kathy Moehring, Alameda (not

present); Kavis Brownson, Alameda (submitted letter); Debbie George, Alameda; Harry Hartman, Alameda; Karen Bay, Alameda; Michael John Torrey, Alameda; Ann Bracci, Alameda; Sherri Steig, WABA; Gene Oh, Alameda (not present); Barbara Marchand, Marchand and Associates (not present); Dave Corkill, Cinema West; Marilyn Ezzy Ashcraft, Alameda; Melody Marr, Chamber of Commerce; Robb Ratto, PSBA; Lars Hansson, PSBA; and Frank Lopez, Alameda.

Opponents (Not in favor of project): Joseph Woodard, Estuary Park Action Committee (EPAC); Dorothy Freeman, EPAC; Stacey Benedetto, Alameda; Kathryn Vincent, Alameda (not present); Nick Benedetto, Alameda (not present); Monty Heying, Alameda; Phyllis Greenwood, Alameda; Richard Tester, Alameda; Julie Chandler, Alameda (submitted letter); Debra Overfield; Carol Hanson, Alameda; Celine Perrin, Alameda; Nancy Hird, Alameda; Ann Channin, Alameda; Michael Karvasales, Alameda; Douglas Holmes, Alameda (submitted letter); John McNulty, Alameda; Jay Levine, Alameda (submitted letter); Ross Dileo, Alameda; Richard Rutter, Alameda; Kevin Frederick, Alameda; Ginni Dofflemyer, Alameda; Robert Todd; Chuck Millar, Alameda; Birgitt Evans, Alameda Architectural Preservation Society (AAPS); Jan Schaeffer, Alameda; Gretchen Lipow, Alameda; Randy Watkins, Alameda (submitted letter); Nils Ohlson, Alameda; Rosemary McNally, Alameda (submitted comments); Mary Fambrough, Alameda; Mr. Roake, Alameda; Jon Spangler, Alameda; Pat Payne, Alameda; Jim Strehlow, Alameda; David Baker, Alameda; Mike Fennelly, Alameda; Reyla Graber, Alameda; Joe Meylor, Alameda (submitted letter); Monica Pena, Alameda (submitted handout); Jenny Curtis, Alameda (submitted handout); Ron Schaeffer, Alameda; Carol Stone, Alameda (not present); Mary Jane Beddow, Alameda; Mark Haskett, Alameda; Scott Corkins, Alameda; Stephen Hahn, Alameda; Kimberly Thomas, Alameda; Judy Beyerstedt, Alameda (submitted letter); Mark Dombeck, Alameda; Monica Dombeck, Alameda; Paula Rainey, Alameda (submitted comments); Morgan, Alameda; Patricia Gannon, Alameda; Anders Lee, Alameda; Vern Marsh, Alameda; Ani Dimusheva, Appellant (submitted letter and petition); Victoria Ashley, Alameda (not present); Susan Battaglia, Alameda (submitted comments); Mallory Penney, Alameda; Bart Wise, Alameda; Valerie Ruma, Appellant; Frederick Koenen, Alameda (not present); Kristi Koenen, Alameda (submitted comments); David Kirwin, Alameda; George Hubbard, Alameda; Christopher Buckley, AAPS; Carl Lasagna, Alameda; Peter Lamson, Alameda (not present); Robert Sikora, Alameda; Richard Neveln, Alameda; Heather Curtis, Alameda; Theresa Fossoff, Alameda (not present); Bill Smith, Alameda; Linda Hansen, Alameda (presented drawing); Ivan Rudenko, Alameda (not present); Gina Shepard, Alameda; Margarita Dorland, Alameda (not present); Alex Helperin, Alameda (not present); Vicki Varghese, Alameda (not present); Sia Bayat, Alameda; Michael Cate, Alameda; and Pat Bail, Alameda.

Following Gina Shepard's comments, Mayor Johnson called a recess at 11:37 p.m. and reconvened the Regular City Council Meeting at 11:50 p.m.

When the meeting was reconvened, Councilmember Matarrese moved approval of continuing the meeting past midnight.

Vice Mayor Gilmore seconded the motion, which carried by unanimous voice vote - 5.

Following Frank Lopez, there being no, further speakers, Mayor Johnson closed the public portion of the Hearing.

Councilmember Daysog stated that the cost for the Cineplex and historic renovation is approximately \$13 million dollars; the report compares the \$13 million cost against \$5.9 million in revenues; there is a negative of \$7.1 million; inquired whether interest is included in the \$13 million cost.

Tim Kelly, Keyser and Marston Associates, responded in the negative.

Councilmember Daysog inquired what the amount would be if interest were included.

Mr. Kelly responded tax increment should be included if interest is included; stated the bonds are already funded; all sources of income that pay for the City's obligations, including tax increment used to fund the debt service on the bonds and garage income, are not included.

Councilmember Daysog inquired whether there was an estimate of how long it would take for property values to raise in order to recoup the \$7.1 million.

Mr. Kelly responded the Community Improvement Commission (CIC) already has the income to pay for the approximately \$15 or \$16 million in bonds which have been sold; the \$7 million for the parking garage is not paid for yet; some sources of funds would be the theater and ground lease rent.

Councilmember Daysog inquired whether the sources of funds would equal \$5.9 million.

Mr. Kelly responded in the affirmative; stated the source of funds would be \$5.9 million in present value against a loan of \$7 million present value.

Councilmember Daysog stated the \$13 million bonds issued for the Cineplex and historic theater would need to be paid back.

Mr. Kelly stated that the bonds have already been issued based upon the CIC's cash flow; the income from the theater project does not have to repay the bonds; the bonds are financed by CIC's existing cash flow.

Councilmember Daysog inquired whether the cash flow is tax increment.

Mr. Kelly responded in the affirmative; the cash flow is the existing tax increment; the tax increment does not come out of the General Fund and is not money that would have gone to the General Fund; the tax increment is redevelopment money that has to be used for certain limited purposes; redevelopment law prohibits the money from being used for Police and Fire services.

Councilmember Daysog inquired whether tax increment could be used for public infrastructure in a redevelopment area, to which Mr. Kelly responded in the affirmative.

Councilmember Daysog inquired whether General Fund costs that are used for public improvements in a redevelopment area could be covered by redevelopment funds.

Mr. Kelly responded that the purpose of the redevelopment financing is to provide economic development, stimulate growth, and remove blight; redevelopment financing is not intended for public improvements that would have otherwise occurred; theoretically, redevelopment funds could be used.

Councilmember Daysog stated that the argument is that redevelopment money cannot be used for General Fund type activity with regards to infrastructure.

Mr. Kelly stated redevelopment money is all the tax increment captured above a certain base; redevelopment law limits the City to use the funds for remediation of blight.

The Development Services Director stated that redevelopment law is very clear that new improvements need to be made; funds cannot be used for operating and maintenance costs; redevelopment law findings that state there are no other public monies available must be made to do an improvement, like a street.

Councilmember Daysog stated that there is an argument that

redevelopment dollars cannot be used for infrastructure improvements that are generally covered by the General Fund Capital Improvement Budget; inquired whether redevelopment dollars could be used under certain circumstances.

The Development Services Director responded in the affirmative; stated redevelopment dollars cannot be used to pay for street resurfacing; pass-through agreements with the County preclude the City from using redevelopment project tax increment on certain projects, such as Estuary Park.

Councilmember deHaan inquired what projects have been obligated with the \$47 million bond issue.

The Development Services Director responded the projects include the new Library and matching funding for some grant money for Webster and Park Streets; there was an existing obligation as part of the construction of the Marina Village Project; \$13 million went to capitalize the payments on the long-term obligation to repay the infrastructure improvements made at Marina Village years ago.

Councilmember deHaan inquired whether \$200,000 was used for intersection remediation at Otis and Park Streets.

The Development Services Director responded that money for intersection remediation came from regular operating tax increment revenues, not bond money.

Councilmember Daysog stated the report states that project results in a net cost to the CIC; that he understands Mr. Kelly's comments regarding estimated CIC costs; the \$13 million bond will be paid from the increase in tax increment in the redevelopment area, not the project itself; the staff analysis compares the estimated CIC costs against the estimated CIC revenues, which results in a \$7 million negative.

Mr. Kelly stated there is a cost; however, the City will own the historic theater, the parking garage and the land underneath the theater; the City is buying assets.

Councilmember Daysog inquired whether the purpose of redevelopment is to generate value; inquired whether the City would collect property taxes if the City owns the assets.

The Development Services Director responded one objective of redevelopment is to create value; redevelopment also serves to build the projects which the community needs; the existing tax increment supports the construction of the parking structure; the

parking structure creates additional business opportunities and new value; the money is also used for projects that the public has decided are important; the historic theater renovation is such a case and is an eligible, legal project; the lion share of the \$5.9 million concerning Councilmember Daysog is the construction, stabilization and restoration of the historic theater; part of the expenditure that would never be recovered is for restoring the theater, which was considered of great concern to the community; staff never reviewed a reuse of the building that would recover the investment; the theater did not have a private sector investor all these years because nobody in the private sector could figure out what could go into the building to substantiate or support the investment.

Councilmember Daysog inquired why the report shows a net negative, to which Mr. Kelly responded redevelopment law requires disclosure.

Vice Mayor Gilmore stated part of the reason for the negative net present value is because the Council directed staff to preserve the historic theater; Council felt the theater would continue to deteriorate if the City did not move forward with preservation; the project cost would not be so high if restoring the theater was not so valuable and the City wanted to build a new theater and parking garage, without the historic theater; the project is running in the red because so much money is being spent for the historic theater infrastructure; inquired whether the historic theater is a financial albatross.

The Development Services Director responded public entities restore buildings because of the appreciation of the value of the asset to the community, on which an economic value cannot be placed; a building use that could support the project costs would result in the building being butchered to increase density, such as public storage; said type of use would not meet the community's restoration and preservation goals.

Councilmember Matarrese inquired whether the parking structure design/build allows the design to be modified.

The Development Services Director responded that one of the goals of using the design/build process was to ensure that the project was built efficiently with as little public money as possible; the design/build process allows designers and construction to come together to yield the most efficient garage; the exterior design review is being resolved to prevent the design/build contract from growing in response to design issues; pinning down the design up front provides the additional guarantee that there would be no questions about what the design/build team put together; the

objective was to have the most efficient, least expensive project, with an eye on speed; the exterior design of the project needs to be known before moving forward, otherwise an intolerable budget situation could be created; design/build should reduce the number of changes later and create a more controlled process for bidding the project and getting the best price and product for the community.

Councilmember deHaan stated that one of the first tasks was to review alternate parking areas in 1999 during the visioning process; inquired what were the alternate areas.

The Development Services Director responded she does not know what the alternate parking areas were in 1999; subsequent parking analysis identified alternative sites, including the Elks Club, Video Maniacs and the Long's site.

Councilmember deHaan stated that he did not recall Video Maniacs being one of the sites.

Councilmember Matarrese stated that Video Maniacs was included as an option in the 2000 Downtown Vision Report.

The Development Manager stated that six studies reviewed different sites since 1972; all studies considered Video Maniacs as one of the top sites.

Councilmember deHaan stated the 2000 parking analysis indicated that 498 parking spaces were needed for 1,500 theater seats; inquired whether the Development Services Director was aware of the analysis.

The Development Services Director responded in the affirmative; stated the analysis was fairly speculative.

Councilmember deHaan stated the analysis indicated that a certain number would park in the lot and some patrons would park in other areas; Park Street has been so successful in recent years that the 200 spaces [in other areas] that were going to be used to support the theater are being utilized now.

The Development Services Director stated the environmental assessment included completion of a new traffic and parking assessment to update the information and confirm that there would be opportunities for shared parking; the commercial district setting of the project means people will have already parked somewhere else.

Councilmember deHaan inquired whether the factor used for the first study has increased.

The Development Services Director responded the new trip manual published after parking work was completed has identical numbers on reverse days; the factors used for Saturday are now the factors that apply to Friday peak parking and vice versa; the Saturday position has been improved significantly.

Councilmember deHaan inquired whether said information has been provided.

The Development Services Director responded in the negative; stated that the only manual of record published at the time the work was completed was used for the [first] study; using the new trip manual staff decided whether changes needed to be made; the decision was that, with the reverse [of Friday and Saturday peaks], an even worse case situation had been analyzed [in the first study].

Councilmember deHaan inquired whether 200 spaces would overflow into other areas because the parking structure would not be able to handle all parking needs.

The Development Services Director responded said case would only occur at one or two peaks a week; 1750 seats were analyzed; the scope of the assessment for the environmental review was a bigger project because staff did not have the final numbers; the proposed project is smaller.

The Development Manager stated that the assumptions in the traffic and parking analysis were conservative, assumed 100% occupancy of the 1750 seats and did not include cross trips; the numbers in the parking study are adequate for meeting the parking demand.

Councilmember deHaan inquired whether the numbers are adequate to support the theater and the new activity on Park Street, to which the Development Manager responded in the affirmative.

Councilmember deHaan inquired whether the parking would support peak times with activities at the Masonic Temple, Kaufman Auditorium, the Elks Lodge, and the high school.

The Development Services Director responded that staff did not factor in that every facility in town could have an event on the same night; the analysis is based on existing trip data at certain times of the day.

Councilmember deHaan stated the theater is not used during peak

hours; the theater peak time is later.

The Development Services Director stated the parking studies included a desire for a much bigger parking structure; a 508 space parking garage was contemplated when the Long's parking lot was discussed; a long-term parking plan is still needed.

Vice Mayor Gilmore stated that existing tax increment covers the bonds that have already been issued; requested staff to address how the Housing and Urban Development (HUD) loan would be paid back, the developer's buying and selling options, and how much capital the developer is investing in the project; stated that there has been a lot of discussion regarding scaling down the theater or just doing three screens; the number one goal of the Downtown Vision Plan was to restore the historic theater for first run movies.

The Development Services Director stated all except \$3.5 million of public investment in the project would go to the historic theater and parking garage; the developer will provide his own furniture, fixtures, and equipment (FF&E) in the historic theater; the developer will bring \$5.3 million in equity and bank financing; the developer has met financing commitments outlined in the Disposition and Development Agreement (DDA); the bank financing includes an SBA (Small Business Administration) portion, which has additional control and rigor because of the examination SBA completes; the developer would build the Cineplex; the City will own the land under the Cineplex and own the historic theater and land; the City will lease the historic theater and the ground under the Cineplex to the developer; a \$700,000 grant will pay for vertical elements, such as the elevator, ramps, Americans with Disabilities Act (ADA) exiting and life safety exiting; the Cineplex entrance will be used to meet ADA requirements; there are two methods for repaying the \$2.8 million loan in the DDA; \$1.4 million will begin to be repaid in the seventh year after the developer's FF&E financing would be retired; the other \$1.4 million will be paid in a percentage rent, which is 17% of the project gross above a certain threshold; DDA provisions preclude the developer from selling or refinancing without paying off the loans; the historic theater retail rental income will be retained by the CIC; the developer has the option to purchase the the historic theater and the land under the Cineplex from the CIC after successfully operating for five years; the developer would have to buy both the historic theater and Cineplex land; the purchase price would be the amount that the CIC paid.

Vice Mayor Gilmore stated that there is a lot of concern over the assumptions about ticket sales; the developer has to sell tickets to meet his obligations to bankers and the CIC; the concern is that not enough tickets will be sold and that the project will fail;

requested staff to address said assumptions.

The Development Services Director stated the assumptions are extremely conservative; staff assumed the project would gross approximately \$2 million per year in ticket sales and another \$900,000 to \$1 million in concessions, for a total of \$3 million; the financial analysis has determined that the project obligations to the CIC would be met at the achievement of said \$3 million; the percentage rent is based on the business producing \$3 million; the assumption is that 60-65% of the Alameda market will be captured; the Bay Area is an anomaly with respect to theater-going trends; Bay Area theater attendance is almost twice the national average; theaters in the area are doing twice the amount of business that staff estimated per screen; staff also wanted to ensure that the project has enough revenue to maintain the facilities; DDA provisions require that the buildings need be operated in a certain manner.

Councilmember Daysog inquired what the square foot rent would be for the historic theater.

The Development Services Director responded staff would have to calculate the amount; the rent has been \$2,000 per month for the past few years.

Councilmember Daysog inquired what is the square footage of the historic theater, to which the Development Services Director responded that the entire building is 33,000 square feet, which includes space that would not be used.

Mayor Johnson requested an overview of the current condition of the historic theater and the status of the acquisition.

The Development Services Director responded the Council took action to begin the eminent domain process late last spring; the building estimate, based on an appraisal, was deposited with the courts; the owner has picked up the deposit and advised the court that he would not contest the sale and is only interested in the value; the value will now be established through the eminent domain process; the City will take possession of the theater on October 3 or 4; the City has worked with the owner to gain access to the building and begin work, such as investigation of the ground water problem in the basement.

Mayor Johnson noted that the building has been used as a skating rink, disco, roller rink and gymnastics auditorium.

The Development Services Director stated that the City has been

working with the Architectural Resources Group (ARG) to assess the building; ARG has worked with engineers and other specialists to determine what needs to be done to bring the building up to code and to repair, reverse and restore some of the damage that has been done; a lot of seismic work has to be done, such as reinforcing the concrete façade marquee area that is only held up by four redwood posts; fire sprinklers have to be installed; the electrical and plumbing work has to be redone; the water in the basement is a combination of a leak from a storm drain as well as ground water intrusion.

The Development Manager stated that the lobby carpet was replaced; the mezzanine carpet is torn; the lobby mirror, mezzanine mural, and light fixtures have been removed; the curtain has suffered water damage; the floor of the auditorium has been built up; buffer walls have been installed along side walls; holes were made in the auditorium ceiling for lighting; there is significant water damage along the alley due to a storm drain.

Councilmember deHaan stated the retail revenue would be received from the historic theater; inquired whether retail revenue would be received from the Cineplex.

The Development Services Director responded in the negative; stated that the developer is building the Cineplex with his own financing and would receive the rents from his own retail space.

Councilmember deHaan inquired whether the rent revenue was significant to the developer to make the project work.

The Development Services Director responded that the funding is part of the picture; the Cineplex retail is only 3,400 square feet.

The Business Development Division Manager stated the revenue from the retail space counts toward the percentage rent the developer will pay.

Councilmember deHaan stated one of the seven auditoriums in the new Cineplex has 78 seats; the historic theater balcony accommodated 150 seats; inquired what is the concern with renovating the balcony.

The Development Services Director responded that the DDA allows the developer to use the balcony at a later point at his own expense if he chooses; the spaces are not soundproof, provide 62-64 seats each and would be used to show boutique films.

Councilmember deHaan inquired whether the Cineplex building could

be downsized if one of the theaters and some retail were removed; stated that he is concerned with protrusions going in all different directions; inquired whether the footprint could be reduced.

The Development Services Director responded the buildings are linked; eliminating a theater from the Cineplex top level would impact the value of what remains and the project's ability to support the additional cost of going to a second floor; some of the value supports the construction cost.

Councilmember deHaan stated protrusions usually cost more money; removing the 79-seat theater would allow the building to be brought back; review of other options would allow reduction of mass; that he has concerns about design.

Kyle Conner, Project Developer, stated more screens are needed, not less; eliminating a screen on the second level of the Cineplex would leave only nine screens; that he would like to have more than ten screens; that he would have a problem with reducing the number of screens.

Mayor Johnson inquired whether Mr. Conner's plan would be to go forward with the balcony eventually, to which Mr. Conner responded in the affirmative.

Councilmember Daysog inquired what the \$72,000 in rent for the historic theater equals per square foot.

Mr. Conner responded the ground floor is approximately 19,000 square feet, including retail; the cinema would be approximately 15,000 square feet.

Councilmember Daysog stated that movie theater square footage comparisons are a way to gauge whether the rent is appropriate.

Mr. Conner stated debt service for construction should be considered as rent because he has a ground lease and does not own the property; rent would be approximately \$1.30 per square foot when considering all of the components to service the debt and rent for the facility.

Councilmember Daysog inquired what the figure would be if debt service were not considered, to which Mr. Conner responded \$0.40 per square foot.

The Development Services Director stated that the rent is based on revenues.

Councilmember deHaan inquired how many seats the historic theater had on the main floor, to which the Development Manager responded 2,000 seats.

Councilmember deHaan inquired how many seats would be accommodated now, to which the Development Manager responded 484 seats.

Councilmember deHaan inquired whether all the space would be utilized.

Mr. Conner responded old seats were spaced 32 inches apart; new seats will be spaced 45 inches apart.

Councilmember deHaan inquired whether the 484 seats would utilize all the space.

Mr. Conner responded in the affirmative; noted old seating areas underneath the balcony would be used for offices and concessions.

Councilmember deHaan inquired whether the historic theater lobby area would be adequate for a concession stand, to which Mr. Conner responded in the negative.

Councilmember Daysog inquired whether rent was compared with other cities or facilities.

Mr. Kelly responded one integrated business is being run in two buildings; rent was run against total gross and was around 15%; the calculations were run on gross, rather than per square foot; the rent is based upon the estimated volume of business.

Councilmember Daysog inquired whether the industry reviews rents on a square-foot basis.

Mr. Kelly responded typical rent would be \$1.35 to \$1.85 per square foot in a suburban area; Alameda's situation is unique; the rent was based on estimated gross sales to be fair to both sides.

Councilmember Daysog inquired whether there was a blended figure for both the new Cineplex and the historic theater, to which Mr. Kelly responded that the developer is building the Cineplex building.

Mayor Johnson stated one of the project goals was to save the historic theater; theaters built today are not like the historic theater; the developer is taking on a lot of space that would not be taken on for a modern theater; the project would be a lot easier if preserving the historic theater were not a goal; there are

obstacles in determining how to go forward with the project and save the historic theater at the same time.

Mr. Kelly stated the historic theater costs over \$9 million for 484 seats; \$9 million is enough money to build a 12-plex.

Mayor Johnson stated eight years ago, the Council gave direction to staff to develop a project that would save the Alameda Theater and have it used for first run movies.

Mr. Conner stated the percentage rent structure was designed to help protect the downside and have everyone share in the upside; the City shares significantly [in the upside] more than any other deal; the amount is three to four times what an average percentage rent would be in any commercial theater in a suburban setting.

Councilmember Daysog inquired whether the City's share of the percentage rent in net present value terms over 20 to 30 years is \$190,000.

Mr. Kelly responded an aggressive assumption that the theater will get 100% of the Alameda market would mean the City will have some significant percentage rents; if the theater does very well, the City will receive 15 to 17%, will share in that [profit] and receive what is believed to be a fair rent.

Mayor Johnson inquired whether 15 to 17% was based on gross or net, to which Mr. Kelly responded gross, including concessions.

Vice Mayor Gilmore stated everyone seems to agree that the historic theater should be restored and preserved; the money being spent to restore the theater could build a 12-plex; money is being put into the historic theater because it almost becomes a public amenity; a public amenity is not expected to make a return; the new Library is not expected to make a return.

Councilmember Daysog noted residents voted for the new Library.

Vice Mayor Gilmore stated the community has clearly expressed that restoration and preservation of the historic theater is valuable; the high cost of rehabilitating the theater makes a financially neutral project difficult; opinions about the rest of the project differ; restoring the theater does not come cheaply.

Mayor Johnson stated there have been on-going attempts to install parking in the Park Street area since the 1970's; there was effort to save the theater in the 1980's; the project will not solve all parking problems on Park Street; Webster Street potential parking

problems need to be reviewed; the City has the opportunity to move forward with the project; the developer is willing; financing is available; there have been years of public study; that she has not come across one person in Alameda who has said do not bother saving the historic theater; saving the historic theater is not easy; no one has attempted to run the theater for 25 years; that she is trying to do what she believes is best for Alameda in the long term.

Councilmember deHaan questioned whether adding a multiplex cinema to the historic theater makes the project economically viable; stated that he is concerned about the movie marketplace; a minimum of 15 screens seems necessary to make money; seven screens definitely will not make money; that he is emphatic about getting parking on Park Street; the theater should not overtake the benefit of having a parking structure; the [Cineplex] design is ugly; the trouble is placing the structure on a small parcel; there is not enough money for the project.

Mayor Johnson stated the project would be easier to manage financially if one of the goals was not saving the historic theater.

Councilmember Matarrese stated one reason for the [financial] shortfall is because the City is paying for assets that will be acquired, such as the parking structure and theater; evidence supports the financial feasibility of the project; requested an explanation of the Planning Board action, including what approval meant and what changes were made; requested the architect to explain the basis of the design.

Rob Henry, The Henry Architects, stated that he inherited the project after Michael Stanton Architectural firm designed the building, which gave direction as to the massing of the building; that he tried to include scale, texture and materials that would be compatible and advantageous to the downtown atmosphere; the project was very difficult; the building's constraints cannot be ignored; the building has to have certain proportions in order to be a successful theater design, which have led to difficult solution with the building overhangs; that he has tried to cooperate with the Design Review Board, the Planning Department, and the Planning Board to address all concerns; the Planning Board placed a couple of conditions on the design; one condition was to add some additional texture to the panels on the corner of the building; many options were studied; the decision was made to enhance the context of the design, rather than introducing something totally foreign to the basic design of the building; the established design for the panels around the corner of the building was carried into

more detail to provide a greater sense of continuity for the overall design.

The Development Services Director stated there was a fairly long pre-design discussion; first, the interiors and the project that the developer wanted to build were done by Mr. Henry and given to Michael Stanton who assisted through the design guideline process and the public process; then, the Historical Advisory Board and Planning Board established the design criteria addressing the issues that the community thought were important; the criteria was provided to the Architect, which were used as the basis for beginning the project.

Councilmember deHaan inquired whether the Cineplex and parking garage should have continuity of design; stated that he would like the buildings to fit together; currently, the two buildings stand alone.

Mr. Henry responded the Cineplex and parking garage are two different buildings with different functions; applying one design to one type of building and expecting that design to apply to another type building is difficult; the design comes out of the internal organization, function and requirements of the project; there is some relationship between the parking garage and Cineplex, which was done purposely with vertical columns; the garage does have a horizontal emphasis, which has been incorporated into the Cineplex design to tie the buildings together; the essence of the buildings is similar.

Vice Mayor Gilmore inquired whether Mr. Henry stated that he is attempting to relate the horizontal elements of the parking structure to the Cineplex, in spite of the historic theater having mostly vertical elements.

Mr. Henry responded in the affirmative; stated architects debate whether or not a new building built in a historic context should be built to look like the historic building or be something of its own character; both sides have pros and cons.

Councilmember Matarrese inquired whether the State guidelines prohibit imitation of a historic building.

The Development Services Director responded that the Secretary of Standards prohibits mimicking or creating a building that would give the false impression that it was built in 1920 instead of 2005; the Secretary of Standards encourages incorporating historic features and elements into the design.

Councilmember deHaan inquired whether or not rounding off the corner would be considered mimicking.

The Development Services Director responded rounding off would not be mimicking; stated mimicking would be trying to make people believe the building is art deco.

Councilmember deHaan stated the Cineplex and parking structure corners could be smoothed; where the Cineplex steps back from the historic theater there are funny, square windows.

The Development Services Director stated that she met with AAPS last week; AAPS feels strongly about the need for a much stronger vertical element; at a number of different public meetings addressing design, people liked the glass lobby element.

Councilmember deHaan stated that he is concerned about the long, 20 to 21 inch, protrusions, which do not match the downtown district and result in an awkward mass; that he would be happy if the project was one-story; however, more screens are needed to make the project financially feasible.

Councilmember Daysog thanked everyone for taking the time to voice opinions; stated that the Council would vote on the appeal of the Planning Board's decision regarding the project design and other design related elements tonight; that he is troubled by the business deal aspects of the project and continues to struggle over what constitutes the proper balance between fulfilling an earnest desire for a historic movie theater that the community could be proud of and the wise and prudent use of public dollars; that he is also troubled by the fact that the cinema project is a negative \$7 million and the new information tonight regarding the \$0.40 per square foot [rent] when market is \$1.35; that the Council has a fiduciary responsibility to exercise leadership when the public's appetite for amenities conflicts with fiscal prudence; that he understands the desire to restore the historic theater and that some people want the Cineplex; however, he is struggling with the rent; \$0.40 per square foot is one-third of the market rate.

Councilmember Matarrese inquired whether the \$1.35 market rate is for commercial space or theater space, to which the Development Services Director responded the rate is for brand new theater space.

Councilmember Matarrese inquired whether data on other historic theaters, such as the Fox Theater in Oakland, was available.

The Development Services Director responded that the Fox Theater is

non-profit.

Councilmember Matarrese stated the comparison [of rent with brand new theater] is not fair.

Councilmember Daysog stated that there is a fair comparison because people are going to walk into what amounts to a brand new historically restored theater.

Councilmember Matarrese stated the building being historically restored makes a difference.

Councilmember Daysog stated the historic restoration of the theater is on the City's dime.

Councilmember Matarrese stated the City would own the building.

Councilmember Daysog stated the City should charge a rent that is at least as close to fair market as possible.

The Development Services Director stated that the developer would be happy to lease at \$1.35 per square foot if the City wanted to build the cinemas.

Councilmember deHaan stated the impact of the project on the downtown district is the real drive; that he cannot place a dollar figure on how the project will improve the environment and make the area more viable; catalyst projects are built to make things happen; Park Street has a new vitality in spite of the City; John Knowles was honored tonight; without real public funding, Mr. Knowles set a standard of small, unique stores; 70% of the merchants in stores ten years are gone because the City did not set up an environment to retain businesses.

Councilmember Matarrese stated John Knowles project was not done in spite of the City and with no public dollars because the Redevelopment Manager's time was paid by the City's redevelopment agency; part of the project's value is that the City is getting first run movies for \$0.40 per square foot and people will spend money in town, rather than elsewhere.

Councilmember Daysog stated that said value could also be realized at \$1.10 per square foot.

Councilmember Matarrese stated financial questions are outside whether or not the Council should uphold the Planning Board's decision, which is about design.

Mayor Johnson stated the rent is a percentage, not a straight \$0.40 per square foot.

Valerie Ruma, Appellant, stated the Council is not reviewing the environmental aspect, such as traffic; an environmental impact report is required by the law before the project can go forward.

The Assistant City Attorney stated that the California Environmental Quality Act (CEQA) requires either a negative declaration or Environmental Impact Report (EIR); a letter from the Appellant's attorney raised an issue that an EIR would have been required if a fair argument was raised at the time the negative declaration was initially adopted; the mitigated negative declaration was adopted in May; pursuant to CEQA, the mitigated negative declaration is presumed, by law, to be adequate if not challenged within thirty days of approval; the mitigated negative declaration was not challenged.

Ms. Ruma stated that the City Attorney's office provided contradictory information that there was no specific appeal process and the appeal tonight could be in written or oral form.

The Assistant City Attorney stated the substance of the design review could be appealed but that the environmental review is not being addressed tonight.

Mayor Johnson requested that the Assistant City Attorney discuss the matter with Ms. Ruma.

Vice Mayor Gilmore stated the parking structure is a design/build project; a picture was shown which was very similar to the proposed design, except that the picture seemed more vertical with narrower opening; inquired whether narrow openings would be an issue from a construction standpoint.

The Development Services Director responded that she could not answer whether the openings could be made smaller; there are a number of structural issues relative to the parking garage because of other design achievements, such as the least amount of columns possible inside the interior garage to provide maximum safety and view; the design is contemplated to carry a lot of load on the outside walls; that she would obtain an answer and provide the information to Council.

Councilmember deHaan inquired whether there could be some type of movement on the long, bare sidewall of the parking garage to give it a feel other than just a flat wall.

The Development Services Director responded the wall would be built on the property line; that she does not have the answer since the structural piece has not been completed; a process has been started to provide artists with an opportunity to prepare an attachable mural.

Councilmember deHaan stated that the flat wall on the historical theater has treatment and movement; although the theater cannot be replicated, movement can be done.

Councilmember Matarrese stated the picture shows a wall with four ins and outs.

The Development Services Director stated there is some articulation.

The Business Development Division Manager stated that the picture presented would not be the final design; the City has a public art policy; the Public Arts Commission received five proposals from local artists to create a design based on the adopted policy.

Councilmember Daysog moved approval of accepting the appeal.

Vice Mayor Gilmore inquired whether Councilmember Daysog's motion was to reverse the decision of the Planning Board.

Councilmember Daysog responded in the affirmative.

Councilmember deHaan seconded the motion.

THE MOTION FAILED by the following voice vote: Ayes: Councilmembers Daysog and deHaan - 2. Noes: Vice Mayor Gilmore, Councilmember Matarrese, and Mayor Johnson - 3.

Councilmember Matarrese stated that he looked at the Planning Board's decision and the findings on both the Use Permit and Design Review; he has difficulty with the subjectivity of what is harmonious in design; experts have discussed vertical and horizontal elements; there are constraints with mimicking the historic theater; the project is a good attempt to meet the goals to use the historic theater for first run movies and provide parking in an unobtrusive way; inquired whether the Council could attach conditions.

The Assistant City Attorney responded in the affirmative.

Councilmember Matarrese stated the conditions that he would like to see included in the motion to uphold the Planning Board's decision

are a condition to have the façade treatment on the Oak Street portion of the parking structure provide vertical elements similar to the ones presented by AAPS and a condition to have the treatment of the Central Avenue façade of the Cineplex provide a less modern treatment of the window in between the historic theater and the corner portion of the Cineplex second-story view spot that is curved outwards.

Vice Mayor Gilmore stated AAPS presented two pictures.

Mayor Johnson requested that the picture be shown.

Councilmember Matarrese stated the picture he was referring to was not the garage in Staunton, Virginia.

Vice Mayor Gilmore stated the picture was of the garage with openings.

The Business Development Division Manager stated the picture is of a garage in Walnut Creek and displayed the picture.

Councilmember Matarrese stated the Council direction was to have the [Cineplex] architecture be less modern than original renderings.

Mayor Johnson concurred with Councilmember Matarrese.

Vice Mayor Gilmore inquired whether Councilmember Matarrese referring to "less modern" applies to the overhang that is on the front of the Cineplex.

Councilmember Matarrese responded in the affirmative; stated that he was referring to the glass lobby that is curved.

Vice Mayor Gilmore inquired whether Councilmember Matarrese had any direction in defining less modern.

Councilmember Matarrese responded squared off with some sloping treatments; however, he is not an architect; the direction should be general; the architect should come back with something less modern for that window specifically and the architect should understand the idea for the parking structure from the picture.

Mayor Johnson requested that the colors be more compatible; further requested staff to review the possibility of having the ticket booth out in front to make the historic theater look like it used to look; stated the booth would not have to be useable.

Councilmember Matarrese moved approval [of upholding the Planning Board decision with the conditions outlined].

Vice Mayor Gilmore seconded the motion.

Under discussion, Councilmember Daysog stated that he would not support the motion because he is concerned about the business deal; charging rent of \$0.40 per square foot gets the City \$3 million; charging rent of \$0.80 per square foot would greatly increase the amount and is still below the \$1.35 per square foot market figure.

Mayor Johnson inquired whether the current colors of the historic theater are the original colors.

The Development Manager responded the original colors are not known; however, the original colors were light.

Councilmember deHaan stated that he is concerned about putting too much on a small parcel; that he would like to see downscaling to bring the project into some proportion; since downscaling is not occurring, he would not support the motion.

On the call for the question, the motion carried by the following voice vote: Councilmembers Gilmore, Matarrese, and Mayor Johnson - 3. Noes: Councilmembers Daysog and deHaan - 2.

ORAL COMMUNICATIONS, NON-AGENDA

(05-409) Michael Robinson, San Francisco Bay Resort Club, submitted a letter to the Council; stated that he has been working with Fish and Wild Life, the Veterans Administration, and the Veterans Community Resource Federation (VCRF) to create a plan for Alameda Point that provides for the needs of said entities; requested the cooperation of City staff in submitting the resort plans as part of the upcoming environmental review.

(05-410) Pete Clark stated the development of Alameda Point would include transit opportunities.

(05-411) Connie J. Rozenkowski, VCRF, stated that there is a proposed plan to convert the Bachelors' Enlisted Quarters at the former Navy Base into a cultural center that would provide programs for veterans, low income families, college students, and foster care children leaving the foster care system; the programs would be funded by the resort development.

(05-412) Bill Smith, Alameda, discussed development.

(05-413) The following speakers addressed the Theater Parking Structure Public Hearing: Valerie Ruma, Citizens for Megaplex Free Alameda; Ani Dimusheve, Alameda; Jan Schaeffer, Alameda; Rosemary McNally, Alameda; Robb Ratto, PSBA; and Jay Levine, Alameda.

COUNCIL COMMUNICATIONS

(05-414) Consideration of Mayor's nominations for appointment to the Civil Service Board, Economic Development Commission, Golf Commission, Historical Advisory Board, Housing and Building Code Hearing and Appeals Board, and Recreation and Park Commission.

Mayor Johnson nominated Marilyn Ezzy Ashcraft and Robert F. Kelley to the Economic Development Commission and Anthony M. Santare to the Golf Commission.

(05-415) Councilmember deHaan stated that he received an announcement for a Krusi Park Open House regarding an application by Cingular Wireless to install a new wireless cell site at the Krusi Park tennis courts; the announcement states that Cingular does not own the existing site.

Mayor Johnson inquired who was sponsoring the Open House, to which Councilmember deHann responded the Development Services Department.

Councilmember deHaan stated that he thought that Cingular developed the first cell towers at Krusi Park.

The Business Development Division Manager stated that she would investigate the matter.

(05-416) Councilmember Matarrese stated that the Harbor Bay Ferry has exceeded the 40% fare box for July; stated that advertisement needs to continue; alternate fuel buying options may need to be considered in the future.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular Meeting at 2:40 a.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
TUESDAY- -AUGUST 16, 2005- -6:10 P.M.

Mayor Johnson convened the Special Meeting at 6:10 p.m.

Roll Call - Present: Councilmembers Daysog, deHaan, Gilmore,
Matarrese, and Mayor Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(05-395) Conference with Labor Negotiator - Agency Negotiator:
Arthur Hartinger of Meyers, Nave, Riback Silver and Wilson;
Employee: City Attorney.

Following the Closed Session, the Special Meeting was reconvened
and Mayor Johnson announced that the Council discussed the City
Attorney and no action was taken.

Adjournment

There being no further business, Mayor Johnson adjourned the
Special Meeting at 6:45 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown
Act.

MINUTES OF THE SPECIAL COMMUNITY IMPROVEMENT COMMISSION MEETING
TUESDAY- -AUGUST 16, 2005- -6:45 P.M.

Chair Johnson convened the Special Meeting at 6:55 p.m.

Roll Call - Present: Commissioners Daysog, deHaan, Gilmore,
Matarrese, and Mayor Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(05-039) Conference with Real Property Negotiators - Property:
Fleet Industrial Supply Center; Negotiating parties: Catellus
Limited Operating Partnership and Community Improvement Commission;
Under negotiation: Price and terms.

Following the Closed Session, the Special Meeting was reconvened
and Chair Johnson announced that the Commission gave direction to
Real Property Negotiators and no action was taken.

Adjournment

There being no further business, Chair Johnson adjourned the
Special Meeting at 7:30 p.m.

Respectfully submitted,

Lara Weisiger
Secretary, Community Improvement
Commission

The agenda for this meeting was posted in accordance with the Brown
Act.

MINUTES OF THE SPECIAL COMMUNITY IMPROVEMENT COMMISSION MEETING
TUESDAY- -AUGUST 16, 2005- -7:35 P.M.

Chair Johnson convened the Special Meeting at 2:40 a.m., August 17, 2005.

ROLL CALL - Present: Commissioners Daysog, deHaan, Gilmore, Matarrese, and Chair Johnson - 5.

Absent: None.

CONSENT CALENDAR

Chair Johnson announced that the Resolution Authorizing the Executive Director to Execute a Fourth Amendment to the DDA [paragraph no. 05-042] was removed from the Consent Calendar for discussion.

Commissioner Matarrese moved approval of the remainder of the Consent Calendar.

Commissioner Gilmore seconded the motion, which carried by unanimous voice vote - 5.

[Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*05-040) Minutes of the Special Joint City Council, Community Improvement Commission (CIC), Alameda Reuse and Redevelopment Authority, and Housing Authority Board of Commissioners Meeting, and the Special CIC Meeting of August 2, 2005. Approved.

(*05-041) Recommendation to approve a Contract with Cooper Puga Management, Inc./The Allen Group, LLC for Construction Management Services for rehabilitation of the Historic Alameda Theater Project and proposed Civic Center Parking Garage for \$1,114,436. Accepted.

(05-042) Resolution No. 05-138, "Authorizing the Executive Director to Execute a Fourth Amendment to the Disposition and Development Agreement (DDA) by and Between the Community Improvement Commission and Catellus Limited Operating Partnership (Developer) Which Would Extend the Expiration Term by One Year From June 2007 to June 2008 in Order to Allow the Developer to Explore a Change from Commercial Office/Research and Development Land to a Mixed-Use Retail/Residential Land Use at the Former U.S. Navy Fleet Industrial Supply Center (FISC) Property." Adopted.

Commissioner Matarrese inquired whether adoption of the resolution

would allow Catellus to explore a change in the current DDA.

The Development Services Director responded that the amendment would allow Catellus to explore re-entitlement of the existing property.

Commissioner Matarrese inquired whether there would be a public process that would allow people to comment, to which the Development Services Director responded in the affirmative.

Commissioner Matarrese stated that he wanted people to be aware that the matter would be publicly noticed and that Catellus would be given a year to provide more information.

Commissioner Matarrese moved adoption of the resolution.

Commissioner Gilmore seconded the motion, which carried by the following voice vote: Ayes: Commissioners Daysog, Gilmore, Matarrese, and Chair Johnson - 4. Abstentions: Commissioner deHaan - 1.

AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, Chair Johnson adjourned the Special Meeting at 2:45 a.m.

Respectfully submitted,

Lara Weisiger
Secretary, Community Improvement
Commission

The agenda for this meeting was posted in accordance with the Brown Act.